THE
MADRAS LAW JOURNAL.

II] JULY. [1948

AGRICULTURAL LEASES IN MALABAR—NOTICE TO QUIT.

BY
M. VELAYUDHAN NAIR, ADVOCATE.

A point of some importance in the tenancy law of Malabar fell to be decided by the High Court in the recent case in *Narayanan Nair* v. *Kunhan Mannadiar*[1]. The learned Judges (Gentle, C.J. and Rajamannar, J.) held in this case that section 14 of the Malabar Tenancy Act only mentions the grounds entitling the landlord to evict a cultivating verumpattomdar from the holding and that before the landlord sues for eviction, he must terminate the tenancy. That, the learned Judges observe, is done either by efflux of time or by determination of a lease providing for forfeiture or by a notice to quit in accordance with law. In the case before them the lease deed did not contain a provision by which the lease became terminated or forfeited upon the lessee granting a sub-lease or upon rent falling into arrear. The landlord did not send a notice to quit before suit. There was only an allegation of an oral demand for surrender which was held to be insufficient and the suit was dismissed on the ground that the lease, which had become one from year to year by the tenant holding over, had not been determined by a notice to quit. It would seem that in their Lordships' view a notice such as is prescribed in section 106 of the Transfer of Property Act is necessary to determine all agricultural leases in Malabar, even cases falling under section 14 of the Malabar Tenancy Act. The learned Judges say at page 562 "Since the lease date is May 15th, a notice terminating the lease, which clearly was one from year to year must expire on that day, whatever period of notice was required, whether six months or a less period is necessary, in a notice to quit terminating an agricultural lease. No such notice was ever in fact given."

It is to be observed that the case before the learned Judges did not really fall under section 14 of the Malabar Tenancy Act, for, although eviction was claimed by the landlord on the ground of non-payment of rent (ground No. 3 of section 14) it was found as a fact that the 1st defendant who was the representative-in-interest of the lessee had sub-leased one of the four items of the property in suit to defendants 6 to 12 and as he was not cultivating the whole holding he was clearly not a "cultivating verumpattomdar" entitled to claim fixity of tenure under section 10. But section 14 relates only to suits for eviction of a "cultivating verumpattomdar" at the instance of his immediate landlord.

In view of the finding in the case that the 1st defendant was not a "cultivating verumpattomdar" to whom the provisions of sections 10 and 14 would not apply, it is clear that the suit did not fall under section 14 of the Tenancy Act and the observations of the learned Judges regarding the necessity of terminating the lease by a notice to quit before suit should therefore be understood as applying only to suits for eviction which do not come under section 14 of the Act.

Two points arise for consideration. (1) Whether a notice conforming to the requirements of section 106 of the Transfer of Property Act has to be sent to determine an agricultural lease in Malabar? (2) Whether in cases falling under clauses (1) to (4) and (7) of section 14 of the Malabar Tenancy Act the landlord is entitled to claim eviction even before the end of the agricultural

1. (1947) 2 M.L.J. 559.

year and whether in such cases a notice to quit has to be sent before a suit for eviction is filed?

Point No. 1.—It would seem that according to the learned Judges who decided the recent case in *Narayanan Nair* v. *Kunhan Mannadiar*[1], a notice to quit such as is prescribed in section 106 of the Transfer of Property Act is necessary to determine an agricultural lease in Malabar and a notice conforming to the requirements of that section has to be sent before a suit for eviction is filed even in cases arising under section 14 of the Malabar Tenancy Act. This view is not, however, reconcilable with the law laid down in the earlier decisions where the point directly fell to be decided. In the case of ordinary agricultural leases it has been held that a six months' notice cannot be insisted upon and that the exact synchronising of the date fixed for surrender in the notice with the date of the termination of the period of the lease is also not necessary, and all that is required is only a reasonable notice. (Vide *Gangadharan Pattar* v. *Manavikraman*[2] and *Jaru Pujari* v. *Somakke*[3]. "What is reasonable notice", says Fielding, J., in the case in *Jagut Chunder Roy* v. *Rup Chand Chango*[4], "is a question of fact which must be decided in each case according to the particular circumstances and the local customs as to reaping crops and letting the land". In the case in *Gangadharan Pattar* v. *Manavikraman*[2], which was an ordinary verumpattom lease in Malabar, the lease was dated 9th March. The notice was dated 16th January 1913 and the notice called upon the tenant to quit on or before the 26th February 1913. Under the contract of lease the entire rent was payable before the end of Makaram which is prior to 26th February and both dates were clearly after the end of the cultivation season. It was held that the notice to quit was reasonable and valid. In the case of *Jaru Pujari* v. *Somakke*[3], the defendant held the property under a Chalgeni Chit dated 30th May, 1915. He held over and the landlord sent a notice of eviction on 27th November 1917 asking the tenant to surrender by the following Vishu-Samkrama (12th April 1918). It was held that Vishu-Samkrama is the customary day for termination of agricultural leases in South Canara and the notice to quit was reasonable and in accord with the custom of the country. It is to be observed that a notice to quit, such as is prescribed in section 106 of the Transfer of Property Act has to be sent to determine even leases governed by that Act only in the absence of a contract or local law or usage to the contrary. Section 117 of the Transfer of Property Act excludes the provisions of sections 105 to 116 of that Act from application to agricultural leases, but the principles, embodied in those sections are applied to agricultural leases as rules of justice, equity and good conscience. (Vide *Krishna Setty* v. *Gilbert Pinto*[5] and *Umar Pulavar* v. *Dawood Rowther*[6]. In the case in *Jaru Pujari* v. *Somakke*[3], His Lordship Mr. Justice Madhavan Nair points out that the dictum of the Full Bench in *Krishna Setty* v. *Gilbert Pinto*[5], that the Legislature wisely refrained from making those sections (105 to 116 of the Transfer of Property Act) applicable *proprio vigore* to agricultural leases for fear of unnecessarily interfering with settled usages which it is undesirable to disturb, shows that the existence of usages and customs would be a special reason for not applying the provisions of the Act (Transfer of Property Act) and the rules of the English Law to agricultural leases. In *Achuthan Nair* v. *Madhavan Nair*[7], the landlord who claimed eviction of the holding for his own cultivation under section 14, clause (5) of the Malabar Tenancy Act, sent a notice of eviction calling upon the tenant to vacate the land by the 11th of March, whereas section 14, clause (5) of the Act permits the landlord to have the land only from the end of an agricultural year. His Lordship Mr. Justice Horwill observes that it is only a small matter and that although the landlord cannot have the land on the 11th of March his

1. (1947) 2 M.L.J. 559.
2. (1917) 33 M.L.J. 512.
3. A.I.R. 1925 Mad. 346.
4. (1882) I.L.R. 9 Cal. 48.
5. (1919) 36 M.L.J. 367 : I.L.R. 42 Mad. 654 (F.B.).
6. (1946) 2 M.L.J. 229.
7. (1945) 2 M.L.J. 13.

demand can be complied with on the 30th March. It would seem that the date "30th March" in the judgment is a mistake for 14th or 15th March for according to the definition in section 3, clause (*a*) of the Malabar Tenancy Act, "agricultural year" means "the year commencing with the 15th of March in any calendar year and ending with the 14th of March of the following calendar year ...."

Point No. 2.—Section 14 of the Malabar Tenancy Act provides that no suit for eviction of a cultivating verumpattomdar shall lie at the instance of his landlord except on the grounds mentioned therein.

As the learned Judges point out in the recent case in *Narayanan Nair* v. *Kunhan Mannadiar*[1], section 14 only specifies the grounds which will justify eviction of a cultivating verumpattomdar upon whom fixity of tenure is conferred by section 10. Section 10 expressly provides that the fixity of tenure conferred by it is subject to eviction "as provided in this Act." In other words, whereas before the enactment of the Malabar Tenancy Act the landlord could evict all kinds of tenants arbitrarily, without assigning any grounds or reasons whatsoever, a "cultivating verumpattomdar" cannot now be evicted by his immediate landlord on any grounds other than those mentioned in section 14. Tenants who are not "cultivating verumpattomdars" within the meaning of the Act are, however, liable to be evicted as before without assigning any grounds therefor.

The grounds of eviction mentioned in section 14 fall under 2 categories. (1) Those that involve misconduct or default on the part of the tenant. (2) Those that are personal to the landlord. The grounds mentioned in clauses (1) to (4) and (7) of section 14 fall under the 1st category and those mentioned in clauses (5) and (6) fall under the 2nd category. In cases falling under the second category [clauses (5) and (6)] it is clear that a notice claiming surrender of the holding by the end of the agricultural year is necessary before the landlord files a suit for eviction, although the exact synchronising of the date fixed for surrender in the notice with the date of the termination of the agricultural year is not strictly necessary. (Vide *Achuthan Nair* v. *Madhavan Nair*[2].) In cases falling under the 1st category [clauses (1) to (4) and (7)] such a notice (to quit by the end of the agricultural year) cannot be considered to be necessary. For, the grounds mentioned in clauses (1) to (4) and (7) are really grounds entitling the landlord to treat the lease as forfeited. They are in fact cases of determination of the lease by forfeiture. In the unreported case S.A. No. 376 of 1942 (*Kochunny Nair* v. *Chimmukutty Ammal*[3]), where the landlord claimed eviction on the ground of non-payment of rent (ground No. 3 of section 14) His Lordship Mr. Justice Happel held that no notice of termination of lease before suit is necessary. It is to be observed that in cases falling under clauses (3) and (7) of section 14 (non-payment of rent and failure to furnish security for fair rent) the landlord cannot get an absolute or indefeasible right to evict the tenant by sending a notice showing his intention to determine the lease, for in those cases the forfeiture is treated as a mere security for the due payment of rent and is relievable by the deposit of the arrears of rent and costs and by the deposit of one year's fair rent or by furnishing security for the same and by the deposit of the cost of the suit as provided in clauses (3) and (4) of section 15. Sending of such a notice in such cases is unnecessary and would be altogether otiose. In the case, however, of forfeiture of the lease incurred by the tenant doing any of the acts mentioned in clauses (1), (2) and (4) of section 14, the forfeiture is not relievable and the landlord is entitled to insist that he should be given a decree for eviction. In such cases no relief against forfeiture is available and the legal forfeiture takes effect. The acts mentioned in clauses (1), (2) and (4) of section 14 constitute breaches of some of the fundamental obligations of the lessee which are implicit in the relationship of landlord and tenant and upon the tenant doing any of those acts the landlord would be entitled to treat the tenancy as at an end and claim immediate eviction—even be-

1. (1947) 2 M.L.J. 559.
2. (1945) 2 M.L.J. 13.
3. (1943) 1 M.L.J. (S.N.) 8.

fore the end of the agricultural year. If the tenancy would thus determine *ipso facto* (by forfeiture) by the tenant doing any of the acts mentioned in clauses (1), (2) and (4) of section 14, it would appear to be a contradiction in terms to say that the lease must be determined by a notice to quit by the end of the agricultural year or a notice to quit conforming to the requirements of section 106 of the Transfer of Property Act. On forfeiture the lessor has the same right of ejectment as he would have if the lessee's term had been otherwise determined. It has been held in the case in *Provat Chandra Syam* v. *Bengal Central Bank, Ltd.*[1] that a forfeiture clause can be availed of even before the end of the agricultural year and no particular form of notice is necessary to terminate a tenancy forfeited according to a covenant in the lease. Determination of the lease furnishes no doubt, the cause of action for a suit in ejectment. Sending of a notice to quit is, however, only one of the modes of determining a lease. [clause (*h*) of section 111 of the Transfer of Property Act]. A lease determines by forfeiture also and the amended section 111, clause (*g*) of the Transfer of Property Act provides for the sending of a notice by the landlord showing his intention to determine the lease in cases where the lease determines by forfeiture as mentioned in the section. It will be observed, however, that the notice insisted upon in section 111, clause (*g*) is quite different from the notice to quit mentioned in clause (*h*) which must conform to the requirements of section 106. The notice mentioned in clause (*g*) of section 111 is only an intimation by the landlord of his election to determine the tenancy. It need not comply with the requirements of section 106. All that is necessary is that the landlord should unequivocally express his intention to determine the lease. (Vide *Manavikraman Thirumalpad* v. *Noor Muhammad Sait*[2].)

Even a notice showing the landlord's intention to determine the lease on the analogy of section 111, clause (*g*) of the Transfer of Property Act does not seem to be necessary in a case falling under clause (3) of section 14 of the Malabar Tenancy Act (non-payment of rent within three months from the due date). Reference may be made in this context to the new section 114-A of the Transfer of Property Act the operative portion of which runs as follows:—

> "Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may, re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—
>
> (*a*) specifying the particular breach complained of; and
>
> (*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach ;
>
> and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.".

As pointed out already, the forfeiture incurred by non-payment of rent is a forfeiture that is remediable and relievable (*vide* section 114 of the Transfer of Property Act and section 15, clause (3) of the Malabar Tenancy Act) and though under the terms of the operative portion of section 114-A extracted above, a suit in ejectment would not be maintainable unless the notice provided in the section is sent to the tenant the proviso to section 114-A shows that no such notice is necessary. The proviso is as follows:—

> "Nothing in this section shall apply an express condition against the assigning, underletting parting with the possession, or disposing, of the property leased, or to an express condition relating to a forfeiture in case of non-payment of rent."

If it is not necessary to send a notice requiring the tenant to remedy the breach (*i.e.* to pay up the arrears of rent due) before a suit in ejectment is filed in a case where the lease determines by forfeiture for non-payment of rent, *ex-hypothesi* it would seem to be not quite logical to hold that a notice to quit in terms of section 106 of the Transfer of Property Act or by the end of the agricultural year or a notice showing the landlord's intention to determine the lease is necessary before the landlord files a suit in ejectment upon ground No. 3 of section 14 of the Malabar Tenancy Act.

---

1. I.L.R. (1938) 2 Cal. 434.

2. (1921) 41 M.L.J. 265.